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CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND GSS CONSULTING

THIS AGREEMENT for consulting services is made by and between respectively the City of Milpitas and the Milpitas Redevelopment Agency (hereinafter referred to for convenience only as "City") and GSS Consulting ("Consultant") (together sometimes referred to as the "Parties") as of February 21, 2006 (the "Effective Date") in Milpitas, California.

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Consultant's Duties and Services attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Term of Services. The term of this Agreement shall begin on the Effective Date and shall end on November 30th, 2008, and Consultant shall complete the work described in Exhibit A by that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8. The Consultant shall not be responsible for delays caused by the City or by causes beyond the Consultant's reasonable control as determined by the City.

1.2 Standard of Performance. The Consultant: (a) shall fulfill and perform all of its obligations under this Agreement, and (b) shall perform all professional services in the manner specified by this Agreement and in accordance with the currently prevailing standards of professionals with the level of experience and training similar to Consultant working in the geographical area in which Consultant practices its profession. Consultant represents themselves as an experienced practitioner in the field of work for the scope of this project and are responsible for performing all work appropriate and necessary to manage Capital Improvement Projects.

1.3 Assignment of Personnel. Consultant shall assign those persons designated in Exhibit C to perform services pursuant to this Agreement. Consultant shall not remove or reassign any designated personnel from the Project without the prior written consent of the City, which City shall not unreasonably withhold. The Consultant shall be allowed to substitute personnel without prior City approval if a designated person leaves the Consultant's employ or is otherwise physically unable to perform the job duties. The new person shall be at least of equal status and experience to the designated person. If City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any designated persons, Consultant shall, upon receiving notice from City, shall reassign such person or persons. The persons designated in Exhibit C represent the minimum staff to be provided by Consultant. Consultant shall assign additional persons to perform services if they are necessary to meet all of Consultant's obligations under this Agreement, including but not limited to the quality and timeliness of performance required by Section 1.2 above. The Consultant shall keep the City informed of personnel assignments related to this project. City may require Consultant to provide monthly labor reports if City feels that appropriate personnel are not being assigned to project. The Consultant shall disclose to the City in writing any known contractual relationship Consultant has that would favor a supplier or contractor or would create a conflict of interest.

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1.4 Time.

Consultant shall devote such resources, money, personnel, and time to the performance of all of its obligations under this Agreement as may be reasonably necessary to fulfill those obligations, including but not limited to the standard of performance provided in Section 1.2 above.

Consultant shall complete each phase by the date scheduled in Exhibit A.

Section 2. COMPENSATION.

City hereby agrees to pay Consultant a lump sum amount not to exceed \$350,000, for all services to performed and reimbursable costs incurred under this Agreement, as shown in Exhibits A and B. The City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from the City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement. Consultant shall immediately disclose to the City in writing any compensation received by Consultant from persons other than the City if that compensation relates to the Project.

2.1 Completion On Schedule.

The Consultant shall manage each project to completion adhering to the approved project schedules.

2.2 Invoices

Consultant shall submit invoices not more often than once a month during the term of this Agreement, based on the cost of services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

Serial identifications of progress bills; *i.e.*, Progress Bill No. 1 for the first invoice, etc.;

The beginning and ending dates of the billing period;

A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;

A tabulation of Reimbursable Expenses for the billing period;

Total invoice amount, total billed to date, and remaining amounts;

Certification of the lack of compensation on the Project other than compensation from the City;

The Consultant's signature.

2.3 Monthly Payment

City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the

receipt of an invoice that complies with all of the requirements above to pay Consultant. The Consultant shall provide reasonable information for the City to evaluate monthly progress billing.

2.3.1 Retention

Not applicable.

2.3.2 Additional Withholding

City shall have the right to withhold an amount from any payment, including final payment, to compensate the City for costs, fees, damages and other amounts incurred by the City to the extent that such City's incurrence of said amounts was caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, (b) acts for which they could be held strictly liable, (c) or as provided for elsewhere in this contract.

- 2.4 Total Payment.** City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. If Consultant performs services pursuant to the City's request (see Section 2.10 below) that are not within the scope of Exhibit A, then Consultant shall be paid for those services based on the hourly rates for additional services specified in Exhibit B.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a phase or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed amendment.

- 2.5 Additional Services.** A contingency amount \$16,000 is included in the contract that may not be used without express written authorization by the City for additional services. Fees for approved work performed by Consultant on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.

- 2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement. This amount shall not be exceeded without written authorization of the City and an appropriate increase in the Reimbursable Expense Budget. Travel outside the area, food, and accommodations are not reimbursable expenses.

- 2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.8 Payment upon Termination.** If the City terminates this Agreement without cause, pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. If the City terminates this Agreement for cause the City shall not be required to make any further payment to the Consultant, and Consultant forfeits all current accrued retention to-date, except that withheld from previous, satisfactorily completed phases as liquidated damages for the loss to the City to administer the completion of the work by others.

2.9 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the City. Consultant shall notify the City in writing and receive written authorization to proceed, prior to doing any work that Consultant asserts is beyond the scope of work of the present contract phase. Consultant shall not delay in commencing the work after receiving authorization to proceed. Consultant acknowledges that timely performance of services is paramount to avoid delay to the Project and damages to the City.

2.10 Responsibility for Additional Costs.
Not applicable.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. For Consultants providing City Staff extension, City shall make available to Consultant only office space and the facilities and equipment listed in Exhibit E and only under the terms and conditions set forth therein.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide policies to City that meet the requirements of this section. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of insurance shall be included in the Consultants fees, except for cost of additional insurance that may be provided by the City. Consultant shall not allow any subconsultant to commence work on any subcontract until Consultant has obtained proof that they are adequately covered by all necessary and prudent insurance. The Consultant shall submit the required certificates of insurance or policies upon submitting an executed original of this Agreement.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this

Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned, non-owned, or hired automobiles, to the extent that they exist.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Company-owned automobiles, if any shall be covered at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) or comparable current coverage. Code 1. No endorsement shall be attached limiting the coverage. Consultant shall notify City if any company owned vehicles exist, or if there are any changes in ownership of vehicles owned by the company.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.3 Professional Liability Insurance.
Not applicable.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with complete certificates of insurance and certified copies of all policies, including complete certified copies of all endorsements. All copies of certificates, policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf.

4.4.3 Notice of Reduction in or Cancellation of Coverage. An endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, except after thirty (30) days' prior written notice by mail has been given to the City. If any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner known to Consultant, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change(s) in coverage.

4.4.4 Additional insured; primary insurance. Except for professional liability and workers' compensation policies, a certified endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) shall be attached to all policies stating that the City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement shall be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

4.4.5 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers, which authorization shall not be unreasonably withheld.

4.4.6 Subconsultants. Consultant shall include all subconsultants as insured's under its policies or shall furnish separate certificates and certified endorsements for each subconsultant.

4.4.7 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

- Terminate this Agreement, for cause.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend and hold harmless the City and its officials, officers, employees, agents (other than the construction contractor(s)), and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by (a) the willful misconduct, breaches of this Agreement, negligent violations of law, or negligent acts or omissions of Consultant or its employees, subconsultants, or agents, or (b) acts for which they could be held strictly liable. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers, and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance policies and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause.

This indemnification and hold harmless clause shall apply to any such damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

If Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any

contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subconsultant shall use due care to comply with all laws applicable to the performance of the work hereunder. Consultant shall exercise due care that the design and bid documents comply with all laws, regulations, and good practices. Consultant's activities in conducting business shall comply with all applicable laws and regulations.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of any nature whatsoever that are legally required to practice their respective professions. Consultant represents to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, or bidder for a subcontract. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in all subcontracts.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time with or without cause upon written notification to Consultant. In the event of termination without cause, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials

provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. City understands that incomplete design work and related calculations, and documents may not be suitable for use

If any dispute exists between Consultant and City, Consultant must continue to perform all of its services. City agrees to participate in non-binding mediation if a dispute cannot be resolved informally by the Parties. Consultant must submit its disagreement in writing to the City along with any relevant documentation.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that the extension, in and of itself, shall not obligate the City to provide Consultant with compensation beyond the amounts provided for in this Agreement.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties. The scope of services and project task assignments may be amended in writing by the Public Works Director or his designee.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's professional competence, experience, and professional knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subconsultants noted in the proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, the City shall give the Consultant notice and reasonable opportunity to correct the breach. If the Consultant fails to correct the breach to the City's satisfaction, City's remedies shall include, in addition to all other remedies available to City under this Agreement and law, the following:
- Terminating the Agreement;
 - Retaining the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement, including rights to use any designs, concepts, or work;
 - Hiring a different Consultant to complete the work described in Exhibit A not finished by Consultant, or City staff may complete such work; and/or

- Terminating the Agreement for any breach shall require forfeiture by the Consultant to any claim to all retention held by the City to-date, and the current month's payment otherwise owed to the Consultant and any other amount otherwise owed to Consultant by City under this Agreement.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All significant work products, including drawings and specifications, reports, maps, models, charts, studies, surveys, and photographs, plans, studies, specifications, records, files or any other documents or materials in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City in the normal course of work or upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Consultant agrees that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of City.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor at the request of City, or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Mediation.** If a dispute arises out of or is related to this Agreement, or the breach thereof, and if the said dispute cannot be settled through direct discussions, the City and the Consultant, as parties to this Agreement, agree to first endeavor to settle this dispute in an amicable manner by mediation through a mutually agreed-to mediation service before having recourse to a judicial forum.
- 10.2 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.3 **Venue.** If either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.4 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.5 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 **Use of Recycled Products.** Consultant shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 **Force Majeure.** The Consultant shall be excused from performing any obligation or undertaking provided in this Agreement in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by an act of God, fire, earthquake, flood, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the Consultant.
- 10.9 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et. seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et. seq.*

Consultant hereby states that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant states that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in

addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

10.10 Solicitation. Consultant agrees not to solicit business at any meeting, or focus group, related to this Agreement, either orally or through any written materials.

10.11 Contract Administration. This Agreement shall be administered by the Public Works Director or designee, who shall act as the City's representative. All correspondence shall be directed to or through the Public Works Director or designee.

10.12 Notices. Any written notice to Consultant shall be sent to:

GSS Consulting
1276 Lincoln Avenue, Suite 105
San Jose, CA 95125
Attention: Gail Seeds

Any written notice to City shall be sent to:

City of Milpitas
455 East Calaveras Boulevard
Milpitas, CA 95035-5411
Attention: Greg Armendariz, Public Works Director

10.13 Professional Seal. Not applicable.

10.14 Integration; Incorporation. This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

10.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The following exhibits are included:

Exhibit A	Scope of Consultant's Duties and Services
Exhibit B	Compensation Manner and Amount, Reimbursable Expenses, Hourly Rates
Exhibit C	Personnel
Exhibit D	Certificate of Insurance, Certificate of Workers Compensation Insurance
Exhibit E	City Support

The Parties have executed this Agreement as of the Effective Date.

CITY OF MILPITAS

CONSULTANT

Charles Lawson, City Manager

Principal
GSS Consulting

MILPITAS REDEVELOPMENT AGENCY

Charles Lawson, Executive Director

Attest:

Mary LaVelle, City Clerk/Agency Secretary

Approved as to Form:

Steven T. Mattas, City Attorney/Agency Counsel

EXHIBIT A

CONSULTANT'S DUTIES AND SERVICES

GSS Consulting (GSS) personnel shall serve as the City's project manager on project) as designated and directed by City of Milpitas staff. GSS shall work under the direction of the City Engineering division and shall assist the City by providing professional project management services and serving as staff augmentation on a project-by-project basis, within the public works context and in compliance with the governing regulations applicable to each work assignment.

GSS shall perform work on the following projects within the scope and budget shown herein.

Task 1 – Senior Center, Project 8176

Project management services are needed for consultant selection, design and bidding of the new Senior Center. The Senior Center will be constructed as a remodel of the existing Library building located within the city's Civic Center. The Senior Center design is to emphasize adaptive re-use of the existing building. Community input will be invited. The Senior Center project schedule will accommodate the schedule for the new Library at 160 North Main Street.

The Senior Center will be designed via a Project Team approach. City's Recreation division staff will provide technical input regarding Senior citizen needs, programs and facilities and will provide administrative support. The Recreation Services Manager will be senior staff lead and serve as liaison to the City Council. The City Engineer will provide project oversight. GSS will provide project management as staff augmentation for the consultant selection process, programming, environmental clearance, design process, permitting process, preparation of construction documents, bid process and award of construction contract. Types of services include:

- manage preparation of project schedules
- manage preparation of project cost plan and budget updates
- manage coordination with outside agencies
- assist with public participation and stakeholder input
- coordinate work by consultant team
- review plans, reports and documents
- provide technical support during programming, design and bidding
- provide assistance with regulatory and environmental requirements
- review outside funding opportunities

The following description of tasks contains typical duties to be handled GSS. Specific requirements may vary based on actual project needs.

A. Consultant Selection

Consultant selection support to include:

- prepare Request for Proposals (RFP) for architectural and engineering services for programming and design
- administer the consultant evaluation and selection process
- schedule and conduct pre-proposal site walkthroughs
- assist in contract negotiations and preparation of contract exhibits
- manage the contract execution process.

B. Programming Process

Programming support to include:

- manage consultant team to assist City in identifying current and future senior center programming needs
- oversee development of a proposed project program with consultant team and identification of possible options
- assist in identifying agency requirements as applicable to programming
- oversee preparation of presentations to Council, Commission, Subcommittee and interested parties as required
- review available documentation of existing conditions
- assist City and consultant team in identifying scope of building renovations required
- coordinate with consultants to identify hazardous materials present, if any, and handling needed
- coordinate with consultants to identify site or building conditions that are inadequate or noncompliant with current codes, if any, and handling needed
- identify extent of site improvements desired by City
- assist in developing preliminary cost plan with allowances for renovations and contingencies
- confirm recommended project program as selected and approved by City which will serve as a basis for Senior Center design.

C. Environmental Clearance Process

Environmental clearance process support to include:

- develop proposed scope of environmental clearance consulting services needed based upon selected project program and preliminary design
- assist in negotiating and executing agreement for environmental clearance services; prepare and review services contract using City's standard contract
- collaborate with transportation division staff for preparation of anticipated transportation impact analysis, assumes use of existing city traffic consultant
- oversee environmental clearance process for an anticipated Mitigated Negative Declaration, including applicable notifications, public review process, and preparation of required documents which may include Initial Study, Notice of Intent, Notice of Completion, Environmental Determination, and Mitigation and Monitoring Plan.

D. Design Process

Design phase general project support to include:

- oversee development and tracking of project schedules
- assist with development of project budget; track budget and prepare updates
- assist with the identification of needed professional/consulting services
- coordinate and monitor design and engineering consultants
- monitor consultant performance and overall project progress
- track and assist with agency requirements
- oversee preparation of meeting agendas and minutes
- assist in and coordinate presentations to Council, Subcommittee, Commission, and stakeholder groups as required
- document project requirements

- investigate and assess outside funding opportunities and provide recommendations, as requested

Design phase task support to include:

- confirm detailed design scope based on program elements
- confirm proposed budget available for construction
- conduct review process for conceptual and schematic designs
- assist with identifying design options
- arrange for preliminary reviews of project with requisite agencies
- identify requirements for agency compliance
- coordinate and track plan review comments
- assist with securing design approvals
- manage design consultant's construction document production
- coordinate team meetings
- monitor project budget and schedule throughout; prepare status reports
- continue coordination of public presentations and project updates
- assist in the preparation of 30%, 65% and 95% construction documents
- conduct progress reviews for each construction document submittal
- assist with conducting peer review of construction documents as needed
- assist in securing agency approvals
- assist in preparation of bid form and alternates
- coordinate production of final bid documents

E. Bidding and Contract Award Process

Bidding and contract award support includes:

- manage selection of dates for advertising and bid opening
- coordinate document printing and distribution
- help develop contractor interest in bidding work
- maintain plan holders list
- assist with preparation and distribution of clarifications, RFI responses and plan addenda
- schedule and conduct pre-bid walk-through meetings
- review bid proposals for completeness and conformance with regulations
- assist City in determining lowest responsible bidder
- schedule and prepare documents for award of construction contract by City Council
- issue notice of intent to award with accepted scope of work, as directed.

Task 1 - Hours and Fee

Fee for services relating to Senior Center, Project 8176 is not to exceed \$274,000.

Fee estimate is based on 2375 hours Senior Project Manager, 300 hours Principal and 60 hours Technical Support, services to be provided through end of bid phase anticipated autumn 2008.

Task 2 – Main Sewage Pump Station Site Improvements, Project 6079

Project management services are needed for the Main Sewage Pump Station Site Improvements, Project 6079. Site improvements are proposed to provide corporation yard facilities for Public Works maintenance operations. Improvements include a new modular operations building, new driveway, paving, drainage, lighting, fencing, security cameras, utilities, landscaping and related features. The improvements are proposed to be designed and constructed in two phases. The first phase provides Access Improvements. It includes a new driveway to the central portion of the site with a median break on North McCarthy Boulevard, and is scheduled for implementation this year. The second phase includes the balance of the Site Improvements [corporation yard features]. This second phase is proposed for implementation following completion of the new pump station, which is under design as a separate project.

GSS will provide project management as staff augmentation for the design, permitting, construction documents, bidding, and initiation of construction. Types of services include:

- oversee project schedule and budget
- coordinate work by consultant team
- coordinate with involved agencies and stakeholders
- administer consultant contracts
- oversee plans and documents
- coordinate compliance with CEQA and environmental documents
- assist City in securing and administering permits and approvals
- assist in handling easements and entitlements

The following description of tasks contains typical duties to be handled GSS. Specific requirements may vary based on actual project needs.

A. Design Process

Design phase support to include:

- oversee project schedules
- track and oversee budget
- coordinate design consultant team
- administer design consultant contract
- coordinate design of Access Improvements and Site Improvements
- identify agency requirements and assist with compliance
- coordinate with stakeholders
- document project requirements
- conduct review process for conceptual design of site improvements
- oversee selection of desired concept for operations building and for design of parking canopy
- manage preparation of construction documents
- conduct reviews of construction document submittals
- track and oversee resolution of plan review comments
- coordinate team meetings
- provide technical support as needed
- assist City in securing and administering approvals and permits
- assist in preparation of bid form and alternates
- coordinate production of final bid documents
- oversee preparation of meeting agendas and minutes

- assist in and coordinate presentations required
- assist in handling easements, entitlements and land ownership aspects

B. Bidding and Contract Award Process

Bidding and contract award support includes:

- manage selection of dates for advertising and bid opening
- coordinate document printing and distribution
- help develop contractor interest in bidding work
- maintain plan holders list
- assist with preparation and distribution of clarifications, RFI responses and plan addenda
- schedule and conduct pre-bid walk-through
- review bid proposals for completeness and conformance with regulations
- assist City in determining lowest responsible bidder
- schedule award of construction contract by City Council
- issue notice of intent to award with accepted scope of work, as directed.

C. Construction Administration

It is anticipated that City staff will provide construction inspection and daily oversight of the construction process via the city's existing construction management staff and construction administration process. GSS will provide assistance, as requested, to maintain the design intent as construction modifications may occur. Available bidding and contract award support includes:

- identify project start and completion dates
- attend pre-construction conference
- assist in responding to contractor RFIs and substitution requests as requested
- assist in review of shop drawings or submittals as requested
- assist in preparation or review of potential change orders as requested
- assist with coordination of inspections with other agencies
- assist with administration of permitting and environmental requirements during construction
- assist with coordination of final inspections and punch list work
- assist with coordination of operation manuals
- assist with administration of close-out process as requested

Task 2 - Hours and Fee

Fee for services relating to Main Sewage Pump Station Site Improvements, Project 6079 is not to exceed \$60,000.

Fee estimate is based on 525 hours, Senior Project Manager and 70 hours, Principal.

Additional Services

Allowance for additional services: not to exceed \$16,000.

Additional services shall be provided only upon advance written authorization by City, for additional tasks at the rates specified in this Agreement, on approved capital projects as requested and authorized by the City Engineer or his designee.

EXHIBIT B
Compensation Manner and Amount, Reimbursable,
Estimated Payment Schedule, Hourly Rates

Compensation shall be on a time and material basis based on the following billing rates and billed monthly in a format following the tasks as listed in Exhibit A.

Standard reimbursable expenses shall include approved subconsultants, postage, express mail, courier service, standard cell phone, business mileage (IRS rate), parking and tolls, reproduction fees, photo printing fees, and similar standard office expenses. Reimbursable expenses will be billed at actual costs plus ten (10) percent.

BILLING RATES (effective Jan. 1, 2006-Dec. 31, 2006)

Principal	\$115.00
Senior Project Manager	92.50
Technical Support III	75.00
Technical Support II	70.00
Administrative Support	60.00

BILLING RATES (effective Jan. 1, 2007-Dec. 31, 2007)

Principal	\$120.00
Senior Project Manager	98.00
Technical Support III	80.00
Technical Support II	75.00
Administrative Support	64.00

BILLING RATES (effective Jan. 1, 2008-Dec. 31, 2008)

Principal	\$127.00
Senior Project Manager	105.00
Technical Support III	85.00
Technical Support II	75.00
Administrative Support	68.00

PO NO: .

[illegible]

EXHIBIT C
Personnel, The Professional Team

Principal/Senior Project Manager: Gail Seeds

EXHIBIT D

Certificate of Insurance, Certificate of Worker Compensation Insurance

EXHIBIT E
City Support

City support will include office space, furniture, telephone, computer with software, fax machine, shared printer, copier, filing cabinets, digital camera, standard office consumables and internet access (DSL or faster) with connection to files on City's server.